Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1997

CIRILA PRZYBYLSKI, Docket No._____

Petitioner,

v.

STATE OF MICHIGAN; DEPARTMENT OF MENTAL HEALTH; COLDWATER REGIONAL MENTAL HEALTH CENTER, WEICHER VAN HOUTEN, M.D., individually and/or acting in his official capacity; and CHARLES VOGLER, D.O., individually and/or acting in his official capacity,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF MICHIGAN

PETITION FOR WRIT OF CERTIORARI

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48 pp

QUESTIONS PRESENTED FOR REVIEW

I.

WERE PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS VIOLATED WHEN THE MICHIGAN COURTS DISMISSED HER ENTIRE COMPLAINT, WITHOUT NOTICE OR AN OPPORTUNITY TO BE HEARD, WHEN ONLY A PORTION OF THE COMPLAINT WAS THE SUBJECT OF RESPONDENTS' MOTION FOR SUMMARY DISPOSITION.

II.

WAS PETITIONER DENIED EQUAL PROTECTION OF THE LAW AND DUE PROCESS WHERE HER CLAIMS OF DISCRIMINATION AND CONSTRUCTIVE DISCHARGE WERE DISMISSED AS BEING CONCLUSORY AND JUDGED BY A "REASONABLE PERSON STANDARD" WHEN SPECIFIC FACTS WERE SET FORTH TO AVERT SUMMARY DISPOSITION UNDER EITHER AN OBJECTIVE OR SUBJECTIVE STANDARD AND SHE AND SHE WAS OF A DIFFERENT RACE, GENDER, AND NATIONAL ORIGIN.

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CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED

This is a Petition for Writ of Certiorari to the Supreme Court for the State of Michigan from its decision on Rehearing dated April 27, 1998.

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

Fourteenth Amendment to the Constitution of the United States, Section 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "
> USC Amendment 14 - end.

Fifth Amendment to the Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a

presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
USC Amendment 5.

MCR 2.116:

***

"(B) **Motion.**

(1) A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense. A request for dismissal without prejudice under MCL 600.2912c; MSA 27A.2912(3) must be made by motion under MCR 2.116 and MCR 2.119.

(2) A motion under this rule may be filed at any time consistent with subrule (D) and subrule (G)(1), but the hearing on a motion brought by a party asserting a claim shall not take place until at least 28 days after the opposing party was served with the pleading stating the claim.

(C) **Grounds.** The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:

(1) The court lacks jurisdiction over the person or property.
(2) The process issued in the action was insufficient.
(3) The service of process was insufficient.
(4) The court lacks jurisdiction of the subject matter.
(5) The party asserting the claim lacks the legal capacity to sue.
(6) Another action has been initiated between the same parties involving the same claim.
(7) The claim is barred because of release, payment, prior judgment, immunity granted

by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

(8) The opposing party has failed to state a claim on which relief can be granted.

(9) The opposing party has failed to state a valid defense to the claim asserted against him or her.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

***

(G) **Affidavits; Hearing.**

(1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a) Unless a different period is set by the court,

(i) a written motion under this rule with supporting brief and any affidavits must be filed and served at least 21 days

before the time set for the hearing, and

(ii) any response to the motion (including brief and any affidavits) must be filed and served at least 7 days before the hearing.

(b) If the court sets a different time for filing and serving a motion or response, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(c) A copy of a motion or response (including brief and any affidavits) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(2) Except as to a motion based on subrule (C)(8) or (9), affidavits, depositions, admissions, or other documentary evidence may be submitted by a party to support or oppose the grounds asserted in the motion.

(3) Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required

(a) when the grounds asserted do

not appear on the face of the pleadings, or

(b) when judgment is sought based on subrule (C)(10).

(4) A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

(5) The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10). Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9).

STATEMENT OF THE CASE

This case was originally filed in the Ingham County Circuit Court on March 3, 1994. The Complaint contained eight counts. Subsequently, an Order was entered dismissing Counts IV through VIII for the reason that these counts were subject to the jurisdiction of the Michigan Court of Claims. These counts were refiled in the Michigan Court of Claims. Then they were joined in the Circuit Court with the first three counts.

Respondents filed their Motion for Summary Disposition as to Counts I through III only. They captioned the case in the State of Michigan, in the Circuit Court for the 30th Judicial Circuit, Ingham County. The Respondents listed the Ingham Circuit Court Number first and then underneath two lines stated:

"(Joined with Court of Claims No. 94-15416-CM)."

The Trial Court granted the Motion for Summary Disposition on May 10, 1995 with neither Respondents or the Court saying anything about the five counts in the Court of

Claims. A Motion for Rehearing was filed because the proposed Order purported to dismiss all counts. The same was heard June 6, 1995 and the Trial Court dismissed all counts at that time.

Thereafter, Petitioner appealed to the Michigan Court of Appeals as to the dismissal of all counts. The Court of Appeals affirmed by way of an unpublished opinion dated December 3, 1996. Petitioner filed a Motion for Rehearing and it was denied February 5, 1997.

Thereafter, Petitioner filed a Delayed Application for Leave to Appeal in the Michigan Supreme Court. It was denied January 30, 1998. A Motion for Reconsideration was denied April 27, 1998. It is from this Order that your Petitioner seeks this Court's Writ of Certiorari to the Michigan Supreme Court.

ARGUMENT

WERE PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS VIOLATED WHEN THE MICHIGAN COURTS DISMISSED HER ENTIRE COMPLAINT, WITHOUT NOTICE OR AN OPPORTUNITY TO BE HEARD, WHEN ONLY A PORTION OF THE COMPLAINT WAS THE SUBJECT OF RESPONDENTS' MOTION FOR SUMMARY DISPOSITION.

Respondents filed a Motion for Summary Disposition regarding Counts I-III of Petitioner's Complaint. These counts concerned constructive discharge and discrimination. These counts were subject to the jurisdiction of the Michigan Circuit Court (Ingham County Circuit Court no. 94-76867-CZ). Other counts had previously been transferred to the Michigan Court of Claims under separate file number (Michigan Court of Claims no. 94-15416-CM) from this original Complaint. These counts contained claims based on wrongful discharge, due process, equal protection, conspiracy to interfere with Petitioner's contractual relations, and breach of contract. These claims were also based on other facts not relevant to Petitioner's

claims of discrimination and constructive discharge. Respondents never moved to dismiss these five claims and in fact, stated in their introduction and procedural history in their Brief in Support of their Motion for Summary Disposition:

> "This case was originally filed on or about March 3, 1994. Subsequently, on May 11, 1994, an order was filed dismissing Plaintiff-Appellant's Counts IV through VIII for the reason that the Circuit Court lacked jurisdiction. These claims were subsequently brought in the Court of Claims, Docket No. 94-15416-CM. Of the counts remaining, Plaintiff-Appellant raises claims of violation of Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq; MSA 3.548(101) et seq, on the basis of Plaintiff-Appellant's age, gender and national origin. Plaintiff-Appellant also complains in Count II of constructive discharge. Plaintiff-Appellant has failed to establish a prima facie case, nor can Plaintiff-Appellant refute the legitimate business reasons proffered by Defendant-Appellees in response to her allegations." (Emphasis added).

These five additional claims were entirely distinct and separate from those in the Circuit Court file. They were not part of "the counts remaining" which were subject to the Summary Disposition Motion. In fact, they were in a separate court, the Michigan Court of Claims.

Petitioner responded to Respondents' Motion to for Summary Disposition in the Circuit Court. The response was directed at the constructive discharge and discrimination counts since they were the only ones movant sought to dismiss. The Judge granted summary disposition as to these claims. Thereafter, this Judge reiterated she had in her mind dismissed all counts at the original hearing, including the remaining 5 counts in the Court of Claims at your Petitioner's Motion for Rehearing of the original Order. These counts were dismissed without notice or opportunity to be heard by Petitioner.

The concern of procedural due process is with the fair administration of justice. Mayberry v. Pennsylvania, 400 US 455, 915 Ct 499, 27LEd2d 532 (1971).

This Court has held that procedural due process requires notice, opportunity to defend before an impartial tribunal (with jurisdiction), and that the problem be resolved with essential fairness. Richards v. Jefferson County, Ala.,517 US 793, 116 S Ct 1761, 135 LEd2d 76 (1996); Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 US 673, 74 L Ed 1107 (1930).

This Court reversed a state court holding that a default judgment must stand absent a showing of a meritorious defense, where the judgment was entered without proper notice and with substantial adverse consequences to the party in default based on the due process clause. Peralta v. Heights Medical Center, Inc., 485 US 80, 108 S Ct 896, 99 Ed 2d 75 (1988), on remand to 1988 WL 83861 (Tex. App. Houston 1st District 1988), writ denied, (Apr 12, 1989).

In fact, a party whose rights may be affected is entitled to be heard. In order that this right may be enjoyed, the party first must be notified. BMW of North America, v. Gore, 517 US 559, 116 S Ct 1589, 134 LEd2d 809 (1996), on remand to, 701

S. 2d 507 (Ala. 1997), reh'g denied (August 15, 1997).

In this case, Petitioner was afforded no notice that the Michigan Court of Claims case (5 counts) was set for a Summary Disposition motion. The Summary Disposition Motion filed was as to only Counts I - III in the Ingham County Circuit Court case. The Brief in Support by Respondents was specific as to addressing the first three counts. Nothing in the motion or accompanying brief dealt with any of the 5 counts in the separate Michigan Court of claims case. As a result, Petitioner responded to the issues raised in the County Circuit Court Motion (discrimination and constructive discharge) as she had no notice the counts in the other case (Court of Claims) were involved. Further, nothing was said by the Respondents or the Court as to this other case in oral argument. Therefore, Petitioner had no knowledge of a need to respond.

Michigan Court Rule 2.116 covers Motions for Summary Disposition. MCR 2.116(B)(2) provides that a hearing on such a motion shall not be held until at least 28 days after service on

the opposing party "with the pleading stating the claim".

MCR 2.116 (C) provides:

> "**Grounds.** The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:..." (Emphasis added).

Additionally, the Court Rule addresses affidavits in subparts (G) and at (G)(4) of 2.116. It provides:

> "A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact...." (Emphasis added).

The Motion for Summary Disposition was filed under MCR 2.116(C)(10). It only addressed the issues of discrimination and constructive discharge. It said nothing about Counts IV - VIII. This is in spite of the requirements of MCR 2.116 for specific identification of the issues and/or grounds.

Since the Michigan Court Rules provide that a Motion for

Summary Disposition must specify the grounds on which it is based, and Respondents did not specify the grounds for dismissal of counts IV through VIII, the due process rights of Petitioner were violated. Further, she did not receive any notice as required (28 days).

Michigan courts have also held that due process, in its most rudimentary form, requires at least notice and an opportunity to be heard. Napuche v. Liquor Control Commission, 336 Mich 398, 403; 58 NW2d 118, 120-1 (1953); Milford v. People's Community Hospital Authority, 380 Mich 49, 155 NW2d 835 (1968); Casad v. City of Jackson, 79 Mich App 573, 263 NW2d 19 (1977). Michigan courts have further held that notice must be given sufficiently in advance of scheduled proceedings to afford a party a reasonable opportunity to prepare and answer. Laird v. Rinckey, 371 Mich 96, 98; 128 NW2d 243 (1963); Riclenour v. Bay County, 366 Mich 225, 240; 114 NW2d 172 (1962); Lawrence v. Department of Corrections, 81 Mich App 234, 265 NW2d 104 (1978).

Petitioner asserted the above actions violated due process and equal protection under the Michigan Construction of 1963, Article 1, Sections 2 and 17 and the Fifth and Fourteenth Amendments to our United States Constitution in the Michigan Courts. (Michigan Supreme Court Brief, pp. 13, 34, and 37; and Petition for Reconsideration Michigan Supreme Court, p. 5; and due process in the Michigan Court of Appeals (Michigan Court of Appeals Brief, p. 35; and Petition for Rehearing Michigan Court of Appeals, p. 7). Despite this, the Michigan Supreme Court denied leave to appeal and Petitioner's Motion for Reconsideration.

As applied herein, Petitioner's rights to equal protection were also violated. Clearly, others similarly situated, in opposing Motions for Summary Disposition, are at the least, informed of what they must oppose.

II. WAS PETITIONER DENIED EQUAL PROTECTION OF THE LAW AND DUE PROCESS WHERE HER CLAIMS OF DISCRIMINATION AND CONSTRUCTIVE

DISCHARGE WERE DISMISSED AS BEING CONCLUSORY AND JUDGED BY A "REASONABLE PERSON STANDARD" WHEN SPECIFIC FACTS WERE SET FORTH TO AVERT SUMMARY DISPOSITION UNDER EITHER AN OBJECTIVE OR SUBJECTIVE STANDARD AND SHE WAS OF A DIFFERENT RACE, GENDER, AND NATIONAL ORIGIN.

The Michigan Supreme Court has held that one may not survive a Motion for Summary Disposition with only conclusory allegations. A plaintiff has the burden to respond with "specific facts showing that there is a genuine issue for trial." Quinto v. Cross & Peters, 451 Mich 358, 547 NW2d 314 (1996) at p. 370

In this case, the Michigan Courts held Petitioner's claims were conclusory only. However, Petitioner set forth specific facts to support her claims of discrimination and constructive discharge. These included, but were not limited to:

(A) Her job evaluation by Defendant Van Houten was less than satisfactory and lower than her previous evaluations by a previous supervisor. (Complaint, paragraph 16 {i}{k}).

(B) Respondents audio taped their conversations

with her without Petitioner's consent and with her door closed (Complaint, paragraph 16 [ee)]), (Petitioner dep., pp. 88-90), (Vogler dep., Vol 1, p. 77).

(C) Respondent Van Houten came to her office two times per week in March, 1991 and asked her why she hadn't left. (Petitioner dep., Vol 2, p. 151).

(D) Ms. Wood testified caucasian males at Petitioner's place of employment did much better on state property than women. (Wood dep., p. 47).

(E) Respondent Vogler said (referring to Petitioner at least once) "What do women know," and would not say things about male patients. (Wood dep, pp. 37-42, 84).

(F) Petitioner was in preferred building till Respondent Van Houten came. (Petitioner dep., Vol. 1, pp. 47, 51).

(G) Petitioner was moved by Respondent Van Houten to a building in order to empty it of patients. (Petitioner dep., Vol. 1, p. 52). She was replaced by a male. (App. Dep.

Vol. 1, pp. 52, 58)

(H) Petitioner was assigned to work only on medicare forms by Respondent Van Houten (Petitioner dep., Vol 1, p. 52) and could not see patients (Petitioner dep., Vol. 2, p. 50).

(I) Respondent Van Houten then said there is no building for you, what are you going to do now. (Petitioner Dep., Vol. 2, pp. 24-25).

(J) Respondent Van Houten supported a white male psychologist over Petitioner when the while male psychologist asked Petitioner to give anti-depressants to a patient with a sexual assault history and he assigned the patient to a female nurse. (Petitioner dep., Vol 1., p. 71-73).

(K) Ms. Wood testified she felt Respondent Vogler checked Petitioner's patients' charts because Petitioner was a Filipino, in her fifties, and a woman. (Wood dep., p. 36).

(L) Respondent Vogler had differences of medical opinion with Dr. Gervitz, a female Russian psychiatrist, in part, because of her nationality. (Wood dep., pp. 37-38).

(M) Respondent Vogler almost always changed Petitioner's medical orders, yet any male doctor's orders or a male psychologist's suggestions were supported by him. (Wood dep, pp. 56-60).

(N) No woman or non-caucasians in the psychiatric or medical field at Respondent hospital were ever placed in positions of authority or in charge. (Wood dep., pp. 77-78).

(O) Based on the work experience at Respondent hospital and on the above, Ms. Wood testified Petitioner was discriminated against by Respondents because she was a Filipino woman in her fifties. (Wood dep, p. 80).

(P) Ms. Wood testified the only reason Respondent Vogler and staff could not agree with Petitioner's medical opinions was because she was a Filipino woman in her fifties. (Wood dep., p. 102).

(Q) Respondent Van Houten's secretary wrote in a letter about Petitioner and stated she noticed Petitioner's support and professionalism with clients, would welcome

working with Petitioner again, and that Petitioner was "... truly an asset to this facility."(Van Houten dep., p. 126).

These facts demonstrate a pattern of discrimination amongst foreign women (classes of which Petitioner was included). Almost all nurses, RCA's, psychologists, LPN's and other support staff were American caucasians. (Vogler Dep., Vol. 2, pp. 22-29), (Van Houten Dep., pp. 140, 147- 148, 178). It is clear also that minority women were never put in positions of authority and/or power. Two of the three foreign women psychiatrists were assigned to the Admissions Unit, a place of difficult work (Petitioner dep, Vol. 1, pp. 43-46). The Third, Dr. Gervitz, was required to take a heavy case load as there was no admissions unit while she was employed at Respondent hospital (Vogler dep., Vol 1, pp. 25-29). Further, Petitioner's treatment was even worse. After Respondent Van Houten came, she was immediately given poorer evaluations, transferred from a preferred work site to (1) just emptying a building of its patients, (2) simply working on forms without being able to see patients,

(3) sent back to admissions to work under Respondent Vogler, and (4) sent to a work site where the patients were already making the transition into the community (Fair Weather Program). (Petitioner dep, Vol 1, p. 50-52, Vol. 2., pp. 24-25), (Van Houten dep, p. 22), (Wood dep., p. 68). Ms. Wood testified everybody was against Petitioner, treated her rudely (if not worse), and Ms. Wood could not understand how Petitioner could work in said work environment (Wood dep, pp. 69-71). Ms. Wood testified that as a result of this treatment, Petitioner became ill. (Wood dep., p. 43).

The judicial branches of state governments are bound by the Equal Protection clause of the Fourteenth Amendment. Barrows v. Jackson, 346 US 249, 73 S Ct 1031, 97 L Ed 1586 (1953), reh'g denied, 346 US 841, 74 S Ct 19, 98 L Ed 361 (1953). This is such because there is a mandate on judicial departments to maintain equality before the law and equal laws. Barrows, supra. The actions of state courts and their judicial officers in their official capacities is state action within the

meaning of the Equal Protection clause. Shelley v. Kramer, 334 US1, 68 S Ct 836, 92 L Ed 1161 (1948).

Herein, it is the inaction/action of the Michigan State Courts which resulted in a denial of Petitioner's equal protection and due process claims. These state courts arbitrarily and capriciously denied over half of her claims without notice or opportunity to be heard, and, then, denied the remaining discrimination claims by simply stating her claims were supported only by conclusory allegations and not specific facts.

Petitioner has asserted specific facts as noted above. Non-caucasian women were never in positions of authority (Wood dep., pp. 77-78). Caucasian males at Respondent hospital did much better on state property than women. (Wood dep., p.47). In fact, foreign women were assigned by Respondents Vogler and/or Van Houten, to (1) the admissions unit, not a favored place to work (due to long hours, violent patients, tension, and excessive paperwork), (2) a place where they were to perform menial tasks, or (3) required to take a

heavy case load (Petitioner dep., Vol. 1, pp. 43-46; Vogler dep, Vol. 1, pp. 25-29, Petitioner's affidavit in opposition to Summary Disposition, paragraph 15; Petitioner dep, Vol. 2, p. 50; Vol. 1, p. 52).

When allowed to see patients, your Petitioner had her patients charts constantly checked and her medical orders changed by Respondent Vogler. Yet any male doctors' orders and even a male psychologist's suggestions were supported by Respondent Vogler. (Wood dep., pp. 36, 56-60). Ms. Wood testified the only reason Respondent Vogler could not agree with Petitioner's medical opinions and checked her patient's charts was because she was a Filipino woman in her fifties. (Wood dep., pp. 36, 102). She said Respondent Vogler would state in general and specifically as to Petitioner, "What do women know." (Wood dep., pp. 37-39, 84).

Despite these specific facts, the Michigan Courts granted Summary Disposition of all of Petitioner's claims. These actions of the Michigan State Courts constitute a denial

of Petitioner's equal protection and due process claims under the Fifth and Fourteenth Amendments to the United States Constitution.

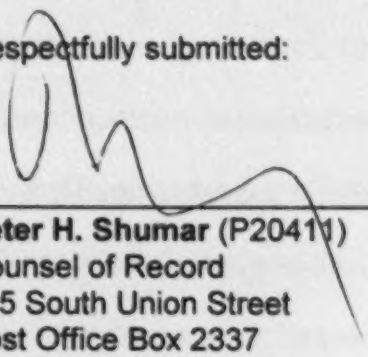
Petitioner asserts that the Michigan Courts have further violated her rights to due process and equal protection of the laws when the Michigan Supreme Court has ruled that the reasonable person standard applies as to a hostile work environment. Radtke v. Everett, 442 Mich 368, 501 NW2d 155 (1993); Quinto v. Cross & Peters, 451 Mich 358, 547 NW2d 314 (1996). This Court ruled that one must view the circumstances from the standpoint of how a reasonable person in a victim's position would have perceived the conduct at issue. This position perpetuates the discrimination and continues a denial of equal protection and due process because it allows factual determinations to be made without consideration of the victim's sensitivities and beliefs. In Radtke, supra, the Michigan Supreme Court declined to follow a gender-conscious standard despite the United States Circuit Courts of Appeals doing so.

Andrews v. Philadelphia, 895 F2d 1469 (3rd Cir. 1990); Bell v. Crackin Good Bakers, Inc., 777 F2d 1497, 1503 (11th Cir. 1985). To make a person of minority status establish their claim(s) on the basis of a typical American reasonable person standard (here Petitioner is from four minorities groups - (1) national origin, (2) race, (3) gender, and (4) age - a Filipino woman in her fifties) defies opportunity for recovery. It simply allows for the perpetuation of the same standards as before passage of Michigan's Elliott-Larsen Civil Rights Act, MCLA § 37.2101 et seq. Petitioner could not control being born of a different race, national origin, and female. She is different in these aspects from Respondents Van Houten and Vogler (as well as almost all other staff at Respondent Hospital). She was and is quite sensitive to adverse remarks of actions of others to or about her because people of her status in America suffer from continuous harassment and discrimination. As a result, Petitioner's rights to due process and equal protection under the

United States Constitution were violated when the Michigan Supreme Court denied leave to appeal and reconsideration despite the issues being raised (Petitioner's Delayed Application for Leave to Appeal, pp. 20-26) (Petitioner's Motion for Reconsideration, pp. 2-4).

WHEREFORE, Petitioner prays this Honorable Court grant her Petition for Writ of Certiorari to the Michigan Supreme Court.

Respectfully submitted:



Dated: July 21, 1998

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APPENDIX

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 30th JUDICIAL CIRCUIT
INGHAM COUNTY

CIRILA PRZYBYLSKI,

Plaintiff,

v

STATE OF MICHIGAN; DEPARTMENT OF MENTAL HEALTH; COLDWATER REGIONAL MENTAL HEALTH CENTER; WEICHER VAN HOUTEN, M.D., individually and/or acting in his official capacity; and CHARLES VOGLER, D.O., individually and/or acting in his official capacity,

Defendants.
_____/

Ingham Circuit
No. 94-76867-CZ

(Joined with Court of Claims No. 94-15416-CM)

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_____

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_____

MOTION FOR SUMMARY DISPOSITION

Defendants, by their counsel, move pursuant to MCR 2.116(C)(10) for summary disposition of Plaintiff's Complaint for the following reasons:

1. There are no genuine issues of material fact as to Plaintiff's claims of national origin discrimination, gender discrimination and age discrimination. Therefore, Defendants are entitled to judgment as a matter of law.

2. Defendants have articulated legitimate, non-discriminatory reasons for the employment actions taken concerning Plaintiff, which Plaintiff has failed rebut as pretextual. For that reason, summary disposition is appropriate.

3. Plaintiff has failed to establish a prima facie case of national origin discrimination, age discrimination or gender discrimination.

WHEREFORE, for the foregoing reasons, Defendants respectfully request this Court to grant their Motion for Summary Disposition and dismiss Plaintiff's Complaint, with prejudice and award to Defendants all costs and attorney fees.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Signature

Mary Ann Berdan
Assistant Attorney General
Attorney for Defendants

Dated: April 17, 1995
aven/9402167 msd

PROOF OF SERVICE

The undersigned certifies that a copy of the above document(s) was served upon the attorneys of record or parties appearing in pro per in the above cause by mailing the same to them/at their respective address, with first class postage fully prepaid thereon, on the 18 day of April 1995.

Signature

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 30th JUDICIAL CIRCUIT
INGHAM COUNTY

CIRILA PRZYBYLSKI,

Plaintiff,

v

STATE OF MICHIGAN; DEPARTMENT OF MENTAL HEALTH; COLDWATER REGIONAL MENTAL HEALTH CENTER; WEICHER VAN HOUTEN, M.D., individually and/or acting in his official capacity; and CHARLES VOGLER, D.O., individually and/or acting in his official capacity,

Defendants.
_____/

Ingham Circuit
No. 94-76867-CZ

(Joined with Court of Claims No. 94-15416-CM)

HON.CAROLYN STELL

Peter H. Shumar (P20411)
Attorney for Plaintiff

Mary Ann Berdan (P42256)
Attorney for Defendants
Department of Attorney General
Public Employment & Elections Division
P.O. Box 30212
Lansing, MI 48909
(517) 373-6434

DEFENDANTS' BRIEF IN SUPPORT OF
MOTION FOR SUMMARY DISPOSITION

INTRODUCTION AND PROCEDURAL HISTORY

This case was originally filed on or about March 3, 1994. Subsequently, on May 11, 1994, an order was filed dismissing

Plaintiff's Counts IV through VIII for the reason that the Circuit Court lacked jurisdiction. These claims were subsequently brought in the Court of Claims, Docket No. 94-15416-CM. Of the counts remaining, Plaintiff raises claim of a violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq; MSA 3.548(101) et seq, on the basis of Plaintiff's age, gender and national origin. Plaintiff also complains in Count II of constructive discharge. Plaintiff has failed to establish a prima facie case, nor can Plaintiff refute the legitimate business reasons proferred by Defendants in response to her allegations.

STATEMENT OF FACTS

Plaintiff was born in 1937 (Plaintiff's Dep, Vol. 1, p 3) and came to the United States in 1967. (Plaintiff's Dep, Vol. 1, p 4). Plaintiff, a psychiatrist, worked at the Coldwater Regional Mental Health Center (hereafter "Coldwater") from June 12, 1988 through April 12, 1991. (Plaintiff's Dep, Vol. 1, p 46). Previously, Plaintiff had worked for the Department of Mental Health at the Traverse City Hospital from November, 1984 through approximately June of 1988. (Plaintiff's Dep, Vol. 1, p 40). Plaintiff made the move to Coldwater for the reason that the Traverse City Hospital was closing. (Plaintiff's Dep, Vol. 1, p 40). Plaintiff admits that her first choice upon transferring was the Caro Regional Center. Her second choice was the Walter Reuther Hospital in Wayne County. (Plaintiff's Dep, Vol. 1, p 40). Plaintiff took the job in Coldwater because it was the only vacancy at the time she was looking for work. (Plaintiff's Dep, Vol. 1, p 41).

Dr. Weicher Van Houten became the Clinical Director at the Coldwater Regional Mental Health Center in late 1989 or early 1990 and remained in that

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ORDER GRANTING MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the City of Lansing, Michigan, on the 16 day of June, 1995.
PRESENT: HON. CAROLYN STELL
Circuit Judge

This matter having come before the Court on Defendants' Motion for Summary Disposition, counsel for both parties having appeared and oral argument having been heard;

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition is GRANTED for the reasons stated on the record and Plaintiff's Complaint is dismissed, with prejudice.

CAROLYN STELL

Carolyn Stell
Circuit Judge

aven/9402167 order3

A TRUE COPY
CLERK OF THE COURT
30th JUDICIAL CIRCUIT COURT

STATE OF MICHIGAN
COURT OF APPEALS

CIRILA PRZYBYLSKI,

Plaintiff-Appellant,

v

STATE OF MICHIGAN, DEPARTMENT OF MENTAL HEALTH; COLDWATER REGIONAL MENTAL HEALTH CENTER; WEICHER VAN HOUTEN, M.D., and CHARLES VOGLER, D.O.,

Defendants-Appellees.

UNPUBLISHED
December 3, 1996

No. 186743
LC No. 94-076867-CZ

Before: Neff, P.J., and Hoekstra and G.D. Lostracco, * JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition in defendants' favor pursuant to MCR 2.116(C)(10). Plaintiff alleged violations of the Civil Rights Act, MCL 37.2101; MSA 3.548(101), and other claims in connection with her employment at a Department of Mental Health facility in Coldwater. Although plaintiff retired from her position as a psychiatrist at this facility, she asserts that the circumstances under which she did so constituted a constructive discharge. We affirm.

We review a grant of summary disposition de novo. *Frick v North Bank*, 214 Mich App 177, 179; 542 NW2d 331 (1995). In

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* Circuit judge, sitting on the Court of Appeals by assignment.

reviewing a grant of summary disposition under MCR 2.116(C)(10), we consider the entire record, viewed in the light most favorable to the nonmoving party with all reasonable inferences drawn in the nonmovant's favor. *Fitch v State Farm Fire & Casualty Co,* 211 Mich App 468, 470-471; 536 NW2d 273 (1995). Summary disposition pursuant to MCR 2.116(C)(10) is proper if there is no genuine issue regarding a material fact and the moving party is entitled to judgement as a matter of law. *Weymers v Khera,* 210 Michigan App 231, 234; 533 NW2d 334 (1995).

Plaintiff first claims that there were genuine issues of material fact with respect to whether she was subject to harassment rising to the level of discrimination on the basis of her gender, age, color, race and/or national origin, and therefore, plaintiff's circuit court case was improperly dismissed. In *Quinto v Cross & Peters Co,* 451 Mich 358, 368; 547 NW2d 314 (1996), our Supreme Court, while not deciding whether a hostile environment claim could be maintained under the Civil Rights Act based on conduct involving a plaintiff's gender, age, or national origin concluded that even assuming a claim could be maintained on such conduct, the plaintiff had failed to rebut with documentary evidence the defendant's contention that no genuine issue of material fact existed. To establish such a claim, assuming it exists, a party would have to show, in part, conduct that "was intended to, or in fact did, substantially interfere with her employment or created an intimidating, hostile, or offensive work environment." *Id.* at 369, quoting *Radtke v Everett,* 442 Mich 368, 394; 501 NW2d 155 (1993).

Here, Plaintiff asserted in her deposition testimony that she was repeatedly "harassed" and that defendants' conduct was "continually" demeaning and humiliating without providing specific details about this alleged harassment. Such conclusory testimony is insufficient to establish a factual issue regarding the existence of an objectively hostile work environment. *Id.* at 370. Further, plaintiff opined that defendant Van Houten did not like her because of her age, national origin and sex, but did not provide any factual basis for concluding that his asserted dislike for her was based on these factors. Plaintiff's evidence amounted to nothing more than mere conjecture and speculation, which is insufficient to establish a genuine issue of material fact. *Cloverleaf Car Co v Phillips Petroleum Co,* 213 Mich App 186,

192-193; 540 NW2d 297 (1995). Plaintiff failed to meet her burden of establishing a prima facie case of national origin, sex or age discrimination and, accordingly, we find that the trial court properly granted defendants' motion for summary disposition.

Plaintiff next claims that the trial court erred in granting summary disposition on the five counts contained in her complaint filed in the Court of Claims because defendants only moved for summary disposition on the three counts contained in the complaint filed in circuit court. We disagree. Because of the procedural history of this case, some confusion arose after the motion for summary disposition was heard regarding whether plaintiff's charges filed in the Court of Claims were dismissed along with the counts filed in the circuit court case. Initially, plaintiff filed an eight count complaint against defendants. Subsequently, counts IV through VIII were dismissed and refiled in the Court of Claims. The two files were then joined by order and essentially thereafter were dealt with as one case by the trial court. Apparently, because defendant did not specifically reference the counts filed in the Court of Claims, plaintiff believes that the trial court erred by granting summary disposition regarding those counts.

Defendants' motion for summary disposition was captioned to include the Court of Claims case, and was entitled a motion for summary disposition, as opposed to partial summary disposition. From the procedural history and captioning of the motion, we believe it was not unreasonable for the court to dispose of all of plaintiff's claims, as plaintiff was fairly on notice that all of her claims were at issue in the motion. Further, plaintiff's allegations contained in counts IV through VIII that were refiled in the Court of Claims relied on the same basic facts and legal theory of constructive discharge based on discrimination that the trial court rejected. Plaintiff has not cited this Court to any additional facts or circumstances that were not previously considered by the trial court that demonstrate that these counts should not have been summarily dismissed.

Affirmed.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco

Court of Appeals, State of Michigan

ORDER

Cirila Przybylski v State of Michigan

Docket # 186743

L.C. # 94-076867-CZ

Janet T. Neff
Presiding Judge

Joel P. Hoekstra

Gerald D. Lostracco
Judges

The Court orders that the motion for rehearing is DENIED.

Seal

A true copy entered and certified by Ella Williams, Chief Clerk, on

Feb 5, 1997
Date

Ella Williams
Chief Clerk

Order

Entered: January 30, 1998

108987

CIRILA PRZYBYLSKI,

Plaintiff-Appellant,

v

STATE OF MICHIGAN; DEPARTMENT OF MENTAL HEALTH; COLDWATER REGIONAL MENTAL HEALTH CENTER, WEICHER VAN HOUTEN, M.D.,

Defendants-Appellees.

Michigan Supreme Court
Lansing, Michigan

Conrad L. Mallett, Jr.
Chief Justice

James H. Brinkley
Michael F. Cavanagh
Patricia J. Boyle
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Justices

SC: 108987
COA: 186743 L
LC: 94-076867-CZ

On order of the Court, the delayed application fro leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

j0127

Seal

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 30, 19 98

Signature

Deputy Clerk

Order

Entered: April 27, 1998

108987 (58)

CIRILA PRZYBYLSKI,

Plaintiff-Appellant,

v

STATE OF MICHIGAN; DEPARTMENT OF MENTAL HEALTH; COLDWATER REGIONAL MENTAL HEALTH CENTER, WEICHER VAN HOUTEN,

Defendants-Appellees.

Michigan Supreme Court
Lansing, Michigan

Conrad L. Mallett, Jr.
Chief Justice

James H. Brinkley
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Clifford W. Taylor
Justices

SC: 108987
COA: 186743 L
LC: 94-076867-CZ

On order of the Court, motion for reconsideration of this Court's order of January 30, 1998, is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

a0421

Seal

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 30, 19 98

Signature

Deputy Clerk